

# Harvis & Fett

GABRIEL P. HARVIS  
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June 20, 2017

BY ECF

Honorable Ronald L. Ellis  
United States Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Jonathan Harris v. City of New York, et al.*, 15 CV 8456 (CM)

Your Honor:

I represent plaintiff Jonathan Harris in the above-referenced civil rights action. I write to respectfully request a pre-motion conference regarding plaintiff's contemplated motion to compel discovery pursuant to Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv), in accordance with § 2(A) of the Court's Individual Practices and Local Civil Rule 37.2. Plaintiff certifies that he has conferred with defendants in a good faith effort to resolve the dispute without Court intervention.

For the Court's information, this § 1983 case challenges plaintiff Jonathan Harris's arrest by NYPD officers for his alleged possession of a scalpel; Mr. Harris denies possession. The Manhattan DA's office declined to prosecute because a scalpel is *per se* legal. Discovery is due to close on July 31, 2017 by order dated April 7, 2017. The instant discovery dispute was referred to Your Honor by order of the Hon. Chief Judge Colleen McMahon earlier today. DE #52.

Plaintiff served discovery demands pursuant to Fed. R. Civ. P. 33 and 34 on April 7, 2017. Defendants did not provide complete written responses until May 25, 2017. A number of categories of core discovery remain outstanding. The material is necessary for plaintiff to conduct depositions and plan the remaining discovery within the approaching deadline. Defendants have also refused – despite repeated requests – to provide available dates for their depositions.

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By email dated May 19, 2017, plaintiff outlined deficiencies in defendants' disclosures and production. The parties conferred by telephone on May 22, 2017 and exchanged numerous emails, and defendants ultimately agreed to a production deadline of June 15, 2017. Defendants failed to meet that production deadline, and the following categories of documents remain outstanding as of this writing:

1. Privilege/redaction log;
2. Recent, labeled color photographs of the defendant officers (*see Franks v. City of New York*, 2013 WL 6002946 (E.D.N.Y. Nov. 12, 2013) (collecting cases); *Castro v. City of New York*, 94-CV-5114, 94-CV-6767, 1995 WL 699730 (S.D.N.Y. Nov. 28, 1995) and *Lozano v. City of New York*, 88-CV-659, 1992 WL 116433 (S.D.N.Y. Apr. 17, 1992));
3. Relevant portion of command log;
4. Draft "scratch" copy of arrest report;
5. 20th Precinct prisoner holding pen roster;
6. Defendant Taylor's performance evaluations January 2006-present;
7. Defendant Magliano's performance evaluations December 2005-present;
8. Defendant Noce performance evaluations January 2006-present;
9. Defendant Ayala performance evaluations December 2008-present;
10. NYPD and CCRB File Nos.: 2015-16608/OG-2015-9363; 08-11454; 12-27260; 2016-40292; 2014-38321; 2014-37095; M09-1971; 01-17170; 07-49111; 08-05365; 09-42658; 11-26745; 2013-25585; 09-00028; 09-42658; 12-50038; 12-50545; 12-51037; 05-36112; 08-54666; 10-46815; and 11-06653; and
11. Substantive response to plaintiff's Interrogatory Nos. 5-9 and 16-17 (seeking disclosure of *crimen falsi* evidence and categories of withheld misconduct allegations as to the defendant officers).

Plaintiff respectfully submits that the foregoing material was specifically requested by plaintiff and is directly relevant to the disputed events and plaintiff's claims herein. *See Frails v. City of New York*, 236 F.R.D. 116, 117 (E.D.N.Y. 2006) ("Disciplinary records involving complaints of a similar nature, whether substantiated or unsubstantiated, could lead to evidence that would be admissible at trial and thus, are discoverable.") (collecting cases) (internal citations omitted); *see also, e.g., Pacheco v. City of New York*, 05-CV-2013 (NG)(VP), 2006 WL 648057, \*1 (E.D.N.Y. Mar. 13, 2006); *Zhao v. City of New York*, 07-CV-3636 (LAK) (MHD), 2007 WL 4205856, \*1 (S.D.N.Y. Nov. 21, 2007); *Bradley v. City of New York*, 04-CV-8411 (RWS) (MHD), 2005 WL 2508253 (S.D.N.Y. Oct. 3, 2005).

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Accordingly, plaintiff respectfully requests a pre-motion conference regarding plaintiff's contemplated motion to compel, by a date certain, the outstanding discovery listed above and available dates for the defendants' depositions.

Thank you for your consideration of this request.

Respectfully submitted,



Gabriel P. Harvis

cc: Paul H. Johnson, Esq.